1. GENERAL APPLICATION.

ences: Article 2, Chapter 3, Part 2, Division 1, Revenue and Taxation Code.
Sections 110, 401, Revenue and Taxation Code.

ules in this subchapter govern assessors when assessing, county boards of ization and assessment appeals boards when equalizing, and the State Board ualization, including all divisions of the property tax department.

y: Adopted June 21, 1967, effective July 23, 1967.
Amended July 27, 1982, effective December 30, 1982.

402.5. Comparable sales. When valuing property by comparison with es of other properties, in order to be considered comparable, the sales ıll be sufficiently near in time to the valuation date, and the properties d shall be located sufficiently near the property being valued, and shall ɜ sufficiently alike in respect to character, size, situation, usability, zoning other legal restriction as to use unless rebutted pursuant to Section 2.1, to make it clear that the properties sold and the properties being lued are comparable in value and that the cash equivalent price realized

r the properties sold may fairly be considered as shedding light on the lue of the property being valued. "Near in time to the valuation date" ɔes not include any sale more than 90 days after the lien date.

History.—Added by Stats. 1969, p. 1988, in effect November 10, 1969. Stats. 1972, p. 2014, in effect August 18, 1972, retive on the lien date in 1973, added " 'near in time to the lien date' does not include any sale more than 90 s after the lien date." Stats. 1980, Ch. 1081, in effect September 26, 1980, substituted "valuation" for "lien" ore "date" in both the first and second sentences.

Generally.—Where all comparative sales available were considered, use of six such sales which complied with the criteria scribed by the section was deemed sufficient to controvert claim that decision of county board of equalization was not ported by substantial evidence. *Westlake Farms, Inc.* v. *Kings County*, 39 Cal. App. 3d 179.

Comparability can never be treated in absolute terms. Even relatively poor data can fairly be considered as shedding it on the value if it is the best or only data available. *Midstate Theatres, Inc.* v. *Stanislaus County*, 55 Cal. App. 3d 864. The purported use of this method of valuation is invalid when based upon sales of other properties which are not subject the same limitation on use as the property in question. *Jones* v. *Los Angeles County*, 114 Cal. App. 3d 999.

Feasibility.—A classification based on topography and present use without additional evidence as to the highest and most fitable use will not support a finding of comparability. *Dressler* v. *Alpine County*, 64 Cal. App. 3d 557.

75.54. Taxes on the supplemental roll; lien against real property. (a) Taxes on the supplemental roll become a lien against the real property on the date of the change in ownership or completion of new construction unless by other provisions of law the taxes are not a lien on real property.

(b) With respect to taxes which are not a lien on real property that have become delinquent on the supplemental roll, the tax collector may use the procedures applicable to the collection of delinquent taxes on the unsecured roll for collection of the tax. If taxes which are not a lien on real property remain unpaid at the time set for sale to the state, following a delinquency in the payment of the second installment of the taxes, the taxes and any penalties and costs thereon shall be transferred to the unsecured roll for collection.

(c) Notwithstanding subdivision (a), in the event there is a subsequent change in ownership following an initial change in ownership or completion of new construction, which occurs before the mailing of the supplemental tax billing attributable to the initial change in ownership or completion of new construction, then the lien for supplemental taxes is extinguished and that portion of the supplemental assessment attributable to the assessee from the date of the initial change in ownership or completion of new construction to the date of the subsequent change in ownership shall be entered on the unsecured roll in the name of the person who would have been the assessee if the additional change in ownership had not occurred, and thereafter that portion of the tax shall be treated and collected like other taxes on the unsecured roll. The remaining portion of the supplemental tax attributable to the initial change in ownership becomes a lien against the real property on the date of the subsequent change in ownership which lien shall also secure any increase or decrease in supplemental taxes resulting from the determination of the new base year value required to be made following the subsequent change in ownership.

(d) In lieu of determining, as provided in subdivison (c), the portion of the supplemental assessment attributable to the person who would have been the assessee if the additional change in ownership had not occurred, a county may elect to compute that portion of the supplemental assessment attributable to the assessee from the first day of the month following the date of the initial change in ownership or completion of new construction to the date of the subsequent change in ownership.

History.—Stats. 1983, Ch. 1102, in effect September 27, 1983, added "supplemental" after "entered on the " in the second sentence. Stats. 1984, Ch. 946, in effect September 10, 1984, added "(a)" before "Taxes"; added "unless by other provisions . . . property." after "construction"; deleted the former second sentence of subdivision (a) which provided that "If there is another change in ownership before the supplemental billing is made, the supplemental assessment shall be entered on the supplemental unsecured roll in the name of the person who would have been the assessee if the additional changes in ownership had not occurred, and thereafter shall be treated and collected like other taxes on the unsecured roll."; and added subdivisions (b) and (c). Stats. 1986, Ch. 1457, effective January 1, 1987, added subdivision (d).

Note.—See note following Section 75.

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-4588

July 29, 1987

Honorable James J. Dal Bon
Marin County Assessor
P.O. Box C
San Raphael, CA 94913

Attention Mr. John L. Suter, Deputy Assessor

Dear Mr. Dal Bon:

This is in response to your letter of June 19, 1987 requesting advice regarding a transfer of property by the Firestone Tire and Rubber Co. (Firestone). You request our opinion on whether the transfer is an "assessable event." Submitted with your request was a copy of a letter from the Firestone Tax Department, a letter opinion from the law firm of Latham & Watkins of Chicago, portions of a lease, a deed granting certain described property located in San Raphael from Firestone to the Firestone Real Estate Leasing Corporation (Frelco), and the Change of Ownership Report reflecting the transaction.

The information provided indicates that the subject premises were transferred by grant deed from Firestone to Frelco on June 25, 1986 for a cash price of $480,000. This was purportedly part of a larger transfer involving Firestone stores across the country. The primary purpose of the transaction was to raise funds to expand Firestone's retail store business. It is contended that the transfer was a financial transaction which resulted in the transfer of title to Frelco as a security interest while Firestone retained all of the benefits and burdens of ownership of the property.

The Latham & Watkins' letter, with a detailed backup memorandum, indicates that the firm has examined the six documents relating to the October 1985 transaction between Firestone and Frelco and concludes that it is a financing transaction for federal income tax purposes. The terms of this arrangement are reflected in (1) a lease, and (2) a purchase contract (these two documents govern the sales/leaseback terms), (3) a credit agreement, (4) a depositary agreement, and (5) a security agreement (these three documents govern the loan terms), and (6) a consent under which Firestone agreed to the Frelco loan arrangements.

Frelco, which is 100 percent owned by Case Western Reserve University, a nonprofit corporation, obtained $35 million in cash to buy the Firestone properties by issuing commercial paper notes backed by a letter of credit from a Canadian bank. Frelco's loan obligations were backed by the Firestone lease obligations which were the sole security for repayment of Frelco's $35 million debt. Frelco is described as a special purpose corporation without assets or source of income other than the lease.

The $35 million purchase price reflects Firestone's historical cost of the properties purchased. Although most properties were fairly new or recently acquired, there was no attempt to set the price at the current fair market value.

Under the lease, Firestone is required to pay rentals at what is described as a floating rate based upon Frelco's cost of funds under which Frelco received neither a profit nor loss. Firestone retained most of the attributes of ownership, other than legal title, including the obligation to guarantee title defects, make all repairs and alterations, obtain all licenses or permits, etc., pay all taxes, utilities, assessments or other charges, provide all maintenance, maintain adequate insurance and receive insurance proceeds in the event of damage to property, satisfy all liens, etc. For an annual option fee of $5,000, which is described as the only profit Frelco is entitled to receive under the entire arrangement, Firestone is entitled to repurchase up to 20 percent of the properties prior to lease termination for a fixed priced based upon unamortized cost. Upon expiration of the lease, Firestone must either repurchase the remaining properties or direct their sale to third parties. Again, the price is unamortized cost with Firestone receiving credit for any amount of Frelco's net worth exceeding $20,000. Where the property is sold to third parties, Firestone receives all profit or loss with the exception that Frelco would share in a loss only if the property was worth less than 4 percent of its total cost. Further, Firestone indemnifies Frelco from any liability arising from breach of contract, tort or other liability relating to the properties which exceed Frelco's interest in the Firestone properties.

In addition to its repurchase options, Firestone is entitled to unilaterally substitute one property for another and to make improvements to the leased properties at its own expense. The lease also expressly provides that Firestone retains all tax benefits including the right to claim depreciation and investment tax credits.

Citing Civil Code section 1105, Property Tax Rule 462(k)(1) provides that there is a rebuttable presumption that a

conveyance is what it is purported to be, a transfer of property. Thus, the June 25, 1986 deed of the San Raphael property from Firestone to Frelco is presumed to be a transfer of property and the burden is on Firestone to overcome this presumption and demonstrate that the deed in question merely transferred legal title as a security interest. Absent a clear showing that this was merely a financial transaction and Firestone retained beneficial ownership, the Assessor is entitled to rely upon the Civil Code section 1105 presumption that the grant deed is what it purports to be, a change in ownership of the property from Firestone to Frelco.

Revenue and Taxation Code section 60 defines "change in ownership" as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." This definition has been interpreted by the courts to mean that a transfer of bare legal title without the corresponding transfer of beneficial use does not constitute a change in ownership. Parkmerced Co. v. City and County of San Francisco (1983) 149 Cal.App.3d 1091. Moreover, Revenue and Taxation Code section 62(c)(1) specifically provides that the creation of a security interest is not a change in ownership.

These principles are reflected in various places in Rule 462. Subdivision (m)(1)(B) provides that change in ownership does not include a transfer of bare legal title resulting in the creation of a security interest not coupled with the right to immediate use, occupation, possession or profits.

Subdivision (k)(1) sets forth the following factors to be considered in determining whether a security interest was conveyed:

* * *

(A) The existence of a debt or promise to pay.

(B) The principal amount to be paid for reconveyance is the same, or substantially the same, as the amount paid for the original deed.

(C) A great inequality between the value of the property and the price alleged to have been paid.

(D) The grantor remaining in possession with the right to reconveyance on payment of the debt; and

(E) A written agreement between the parties to reconvey the property upon payment of the debt.

With respect to sale and leaseback transactions, subdivision (k)(4) provides that a sale and leaseback transaction shall be rebuttably presumed to be a nonreappraisable financing transaction upon a proper written showing by the property owner, such as a written opinion or ruling by the Franchise Tax Board or the Internal Revenue Service, to the effect that the transaction is considered to be a financing transaction for income tax purposes.

The information furnished by Firestone is consistent with its contention that the October 1985 transaction with Frelco was a financing arrangement under which Frelco received legal title to the various properties affected as a security interest for the $35 million loan. There are numerous factors which support this conclusion. The purchase price of the properties reflected book value rather than current market value. The amount of "rent" was based upon the carrying cost of the loan rather than market rent. For all practical purposes, Frelco could not either gain a profit or suffer a loss from its ownership of the properties. Firestone retained all of the benefits of ownership, including the right to reacquire the property for fixed amounts, depending upon the remaining unamortized cost, and thus benefit from any appreciation in value. Further, it retained all tax benefits, rights to proceeds from insurance, etc. Firestone also bore all of the burdens of ownership including obligations to pay all maintenance and operating costs and to suffer any losses in value. On termination of lease, Firestone was required to either repurchase the properties or to direct their sale to third parties. In either case, Frelco's profit was limited to $20,000 over the cost of paying off the loans. These various factors support the conclusion that Firestone was borrowing money rather than selling the property in a transaction which transferred the beneficial ownership to Frelco.

The views expressed herein are based upon the limited information provided with your letter. While the information provided supports the conclusion stated, it should be recognized that we have not examined all of the terms of the agreements of the parties. We have no way of knowing, therefore, whether the transaction may have contained other terms which might lead us to a different conclusion. Thus, we are unable to render an opinion other than to state that the information provided supports the taxpayer's contention.

It is apparent that it is very important to Firestone to have the transaction treated as a financing transaction for income tax purposes. Presumably, the tax benefits, such as depreciation or investment tax credits, could not be used by Frelco. Thus, Firestone wanted to be assured of its continuing

right to claim the tax benefits and sought the opinion of Latham & Watkins. There is no indication, however, of how the Internal Revenue Service or Franchise Tax Board has treated this transaction. Evidence that the Internal Revenue Service or Franchise Tax Board has treated the transaction as a financing transaction would create a presumption that this was a nonreappraisable sale and leaseback. You may wish to ask Firestone for further evidence of the Internal Revenue Service treatment of this transaction.

Finally, we note that the deed in question was executed in June of 1986 while the information provided relates to an October 1985 sale and leaseback. None of the information provided, other than the statements contained in Mr. Christensen's letter of June 12, 1987, supports the conclusion that the 1986 deed is part of the 1985 sale and leaseback. You may wish to request further verification of this point as well.

In conclusion, there is insufficient information for us to render opinion as to the true character of the October 1985 sale and leaseback, although the information provided does, certainly, support Firestone's position. If the Internal Revenue Service or the Franchise Tax Board have reviewed the matter and treated it as a financing transaction, that may end your concern. If not, then you may wish to request complete copies of the subject arrangements in order to determine whether they are, in fact, consistent with the statements provided. Finally, we recommend that you request further evidence establishing that the June 1986 deed is part of the 1985 sale and leaseback arrangement. The burden is on Firestone to clearly demonstrate that the 1986 deed is part of the 1985 sale and leaseback and that it merely reflects a security interest.

Please feel free to contact me if I can be of further assistance in this matter.

Very truly yours,

Richard H. Ochsner

Richard H. Ochsner
Assistant Chief Counsel

RHO:cb
0612D
cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. Arnold Fong